

General Teamsters Local 162, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (American Steel, Inc.) and Gary E. Males, Case 36-CB-880

April 28, 1981

DECISION AND ORDER

On September 24, 1980, Administrative Law Judge James T. Barker issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions with a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and supporting brief, and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

Respondent has excepted to the Administrative Law Judge's findings that it violated Section 8(b)(1)(A) of the Act by threatening the Charging Party, Gary E. Males, that it would not process a grievance initiated by Males under the collective-bargaining agreement because Males had filed unfair labor practice charges with the Board against Respondent and the Employer.

As set forth more fully in the Administrative Law Judge's Decision, at all times material herein Respondent has been the exclusive bargaining representative of an appropriate unit of employees at American Steel, Inc., the Employer, and the Employer and Respondent have been parties to a collective-bargaining agreement containing, *inter alia*, a grievance and arbitration procedure.

On September 11, 1979,¹ the Employer terminated Males, a member of the bargaining unit. On the next day, Males filed a grievance challenging his termination and Respondent sent a letter to the Employer concerning the grievance. Subsequently, after preliminary steps had failed to resolve the grievance, a grievance meeting comprised of an equal number of Employer and Respondent representatives was scheduled for October 23 at 2 p.m.

On October 22, Males, who was aware of the grievance meeting scheduled for the next day, filed 8(a)(3) charges alleging that the Employer had unlawfully terminated him and 8(b)(1)(A) charges alleging that Respondent had failed to represent him fairly concerning grievances that he had filed over disciplinary warnings and his discharge. On the morning of October 23, Males met with two union representatives, Joseph Edgar and Howard Hurst, to discuss the presentation of the grievance scheduled for that afternoon. Prior to meeting with Males, Edgar and Hurst were informed that Males had filed 8(b)(1)(A) charges against Respondent;

the union representatives had no knowledge that Males also had filed the 8(a)(3) charges against the Employer. After discussing the merits of his grievance and the procedure which would be involved in the presentation of the grievance, Edgar informed Males that he understood Males had filed unfair labor practice charges alleging that the Union had failed to represent him properly in the pending grievance. Edgar further stated that he thought the charges were "illogical" and he asked Males why he had filed charges when he knew a grievance meeting had been scheduled to consider the matter. In addition, Edgar stated that Males had created an additional problem by filing the unfair labor practice charges. Edgar explained that he did not operate in an "underhanded" manner and, accordingly, he was obligated to inform the Employer's representative that Males had filed unfair labor practice charges.² Edgar told Males that there was a possibility that, because of the unfair labor practice charges, the Employer might not want to proceed with the processing of the grievance. Males then asked Edgar what Edgar wanted him to do. Edgar responded as follows:

I don't care what you do. You can withdraw the charges, you can do anything you want, but I am going to make the disclosure when we are over there because I am not used to getting in and operating with anyone underhanded. You can do whatever you want. The hearing is set for 2:00.

Following the meeting with Edgar and Hurst, Males contacted a representative of the Board's Regional Office and related his earlier conversation with Edgar. Males was told that he could withdraw the charges without prejudice and, if he desired, he could later refile the charges. During the break for lunch, Males withdrew the 8(b)(1)(A) charges. Shortly before the grievance meeting began, he told Edgar that the charges had been withdrawn. Edgar took Males at his word and made no attempt to verify whether the charges had in fact been withdrawn. No mention of the unfair labor practice charges was made at the grievance meeting and the grievance meeting deadlocked on the issue of whether Males' termination had been proper.³

The Administrative Law Judge found that Edgar created a linkage between the unfair labor practice

² Since Edgar was only aware of the 8(b)(1)(A) charges, it is clear that he was only referring to those charges and not the 8(a)(3) charges that Males had filed against the Employer. Accordingly, we find no merit to the complaint allegations that Respondent "threatened" to tell the Employer that Males had filed 8(a)(3) charges against the Employer.

³ Subsequently, the 8(a)(3) charges against the Employer were dismissed by the General Counsel.

¹ Unless otherwise specified, all dates hereafter refer to 1979.

charges and the timely processing of the grievance by broaching the topic of Male's 8(b)(1)(A) charges in the context of the grievance preparation meeting. Although there was no direct evidence that Edgar had threatened Males, the Administrative Law Judge found that Respondent had conveyed the clear and unmistakable message that Respondent would not timely process Males' grievance unless Males withdrew his unfair labor practice charges against Respondent. We disagree.

Although we agree with the Administrative Law Judge that a union violates Section 8(b)(1)(A) of the Act by threatening to delay the processing of an employee's grievance unless that employee withdraws an unfair labor practice charge against the union,⁴ we find that the record in the instant case does not support the complaint allegations that Respondent so threatened Males. In finding that Respondent unlawfully threatened Males, the Administrative Law Judge relied on little more than Edgar's statements at the pre-grievance meeting that he felt dutybound to inform the Employer's representative of the existence of the unfair labor practice charges and that, based on that information, the Employer might not want to proceed with the grievance. In the circumstances of this case and in the absence of other probative evidence indicating that Respondent was attempting to convey such a threatening message, we find that the record does not support the Administrative Law Judge's conclusion that Respondent violated Section 8(b)(1)(A) of the Act. In fact, we find that the record supports the contrary conclusions, i.e., that, although Respondent was unhappy over the unfair labor practice charges filed by Males, Respondent was prepared to process the grievance that afternoon. Thus, Edgar did not raise the issue of the 8(b)(1)(A) charge until after he and Hurst had spent considerable time preparing for the processing of the grievance. If Respondent did not intend to process Male's grievance unless the unfair labor practice charges were withdrawn, it is unlikely that two union representatives would have spent time preparing for the processing of that grievance prior to "demanding" that the unfair labor practice charges be withdrawn. Additionally, in response to Males' question as to whether he should withdraw the charges, Edgar told Males: "You can do whatever you want. The hearing is set for 2:00." In other words, Edgar informed Males that, whatever he did with the charges, Respondent was prepared to timely process the grievance. Also, when Males informed Edgar that the unfair labor practices charges had been withdrawn, Respondent made no

attempt to verify whether the charges had been withdrawn. If Respondent had intended to threaten Males about processing his grievance, it is likely that Respondent would have called the Board's Regional Office to verify that the unfair labor practice charges had been withdrawn. Finally, unlike the Administrative Law Judge, we do not find that Edgar's statement that he intended to make the Employer aware of the existence of the unfair labor practice charges conveyed a threatening message. The existence of unfair labor practice charges is public information, not part of a confidential communication between a bargaining representative and a unit member, and we do not draw an adverse inference from the fact that a union representative intended to make an employer aware of all of the facts concerning the processing of a grievance.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

JAMES T. BARKER, Administrative Law Judge: This case was heard before me in Portland, Oregon, on August 5, 1980, pursuant to a complaint and notice of hearing issued on March 31, 1980, by the Acting Regional Director for Region 19 of the National Labor Relations Board. The complaint, which alleges a violation of Section 8(b)(1)(A) of the National Labor Relations Act, as amended, hereinafter called the Act, is based upon a charge filed by Gary E. Males on February 14, and an amended charge filed by Males on March 31.¹ In its duly filed answer, General Teamsters Local 162, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Respondent, denies the commission of any unfair labor practices and raises certain affirmative defenses. The parties were provided full opportunity to make opening and closing statements, to examine and cross-examine witnesses, to introduce relevant evidence, and to file briefs with me. The parties waived the filing of briefs, and counsel for the General Counsel and counsel for Respondent made closing statements.

Upon the basis of the entire record, and my observation of the witnesses, I make the following:

⁴ *Graphic Arts International Union 96B (Williams Printing Company)*, 235 NLRB 1153 (1978), and the cases cited therein.

¹ The charge and a portion of the amended charge as well were dismissed insofar as they alleged a failure on the part of Respondent to represent Males properly with respect to certain grievances concerning warning letters and his September 11, 1979, termination.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

At all times material herein, American Steel, Inc., hereinafter called the Company, has been an Oregon corporation maintaining its office and place of business in Portland, Oregon, where it has been at all material times engaged in the manufacture and sale of steel products.

During the 12-month period preceding the hearing in the instant matter, the Company, in the course and conduct of its business operations, sold and shipped goods or provided services from its facilities within the State of Oregon to customers outside said State, or sold and shipped goods or provided services to customers within said State, which customers were themselves engaged in interstate commerce by other than indirect means, having a total value in excess of \$50,000.

The parties stipulate, and I find upon the basis of the foregoing facts, that at all times material herein the Company has been an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent concedes, and I find, that at all times material herein it has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issue in this proceeding is whether Joe Edgar, acting in his capacity as secretary-treasurer and agent of Respondent, threatened not to proceed to a scheduled Joint Conference Board meeting concerning a grievance which Gary Males had previously filed under the terms of Respondent's collective-bargaining agreement with American Steel, Inc., unless Males withdrew charges which he had filed with the Board pertaining to his September 11 termination. In the event this issue is resolved adversely to Respondent, a further issue is raised whether a remedial order is warranted in the total circumstances of this case.²

B. *Pertinent Facts*1. *Background*

At all times material herein, Respondent has been the exclusive bargaining representative of the employees of the Company in the following described unit:

All truckdrivers, lift employees, jitney stackers, boom and A frame operators, truckdriver helpers, hostlers, extras, and dispatchers, excluding all other employees, and office clerical employees, professional employees, guards, and supervisors as defined in the Act.

At all pertinent times, Respondent and the Company have maintained and enforced a provision of the collective-bargaining agreement containing a grievance and arbitration procedure. At the time of his termination on September 11, 1979, Gary Males was employed in the bargaining unit and was a member of Respondent.³

On September 12, Gary Males filed a grievance challenging his termination and, by a letter of the same date, Howard Hurst, one of Respondent's business agents, dispatched a letter to the Company concerning the grievance. In due course, the Joint Conference Board was scheduled to convene on October 23 at 2 p.m. to consider the grievance.⁴ Males was aware of the pending Joint Conference Board meeting when, on October 22, he filed charges in Cases 36-CA-3537 and 36-CB-857 alleging violations of Sections 8(a)(3) and 8(b)(1)(A) of the Act, respectively, arising from his September 11 termination. The 8(b)(1)(A) charge alleged that the Union had failed to represent Males "properly concerning grievances filed over warning letters and discharge from American Steel Company."

2. *The alleged proscribed conduct*

On the morning of October 23, preparatory to the convening of the Joint Conference Board meeting later in the day to consider Males' pending grievance, Males met with Joseph Edgar, secretary-treasurer and chief administrative officer of Respondent. Howard Hurst, a business representative of Respondent, was also present. The meeting was for the primary purpose of completing final preparation for the presentation of Males' grievance to the board. Edgar and Hurst had become aware prior to meeting with Males that Males had filed unfair labor practice charges against the Union. They had no first-hand knowledge of the charges which had been filed against the Company. After discussing the procedures which would be involved in the pending grievance meeting, Edgar noted that he understood that Males had filed unfair labor practice charges against the Union for allegedly failing to properly represent Males concerning the pending grievance. Males confirmed this, and Edgar observed that this seemed "a little bit illogical." Edgar asked Males why he would "prefer charges" knowing that the Joint Conference Board was scheduled to meet to consider the matter. Edgar added that he thought the charges involved perjury because Males knew that the hearings were scheduled to convene to consider the grievance. Edgar asserted that Males had created an additional problem and he informed Males that he intended

² Evidence proffered by Respondent for the purpose of establishing diligence and attentiveness on its part in processing six grievances initiated by Males prior to October 22 relating to previous warning letters, suspensions, and a termination accomplished by the Company with respect to Males was rejected on grounds of relevancy and materiality. I reaffirm that ruling and reject Respondent's contention that the evidence was admissible as having remedial significance reflecting the isolated nature of the conduct raised by the instant complaint. This affirmation is based also upon case precedents cited in the portion of this Decision entitled "The Remedy."

³ Unless otherwise specified, all dates refer to the calendar year 1979.

⁴ Under the terms of the grievance and arbitration provision of the agreement, preliminary steps are undertaken to resolve the grievance without resort to the Joint Conference Board which is comprised of an equal number of employer and union representatives.

to disclose to the attorney representing the employer association at the Joint Conference Board meeting that Males had filed the charges. In amplification of this, Edgar credibly testified as follows:

[T]here is a damn good possibility that they may not want to proceed based on the fact the charges are filed. I don't know, but I am [going] to make that disclosure to them.

Males asked Edgar what Edgar wished him to do. Edgar responded as follows:

I don't care what you do. You can withdraw the charges, you can do anything you want, but I am going to make the disclosure when we are over there because I am not used to going in and operating with anyone underhanded. You can do whatever you want. The hearing is set for 2:00.

In explication of his intention and purpose of informing counsel for the Company concerning the pendency of the unfair labor practice charges against the Union, Edgar testified as follows:

Well, he was the attorney for the Association. I was going to disclose to Mr. Watts that there had been charges filed by him [Males] and let him and his principals determine whether or not they wanted to proceed with the hearing. I was there to proceed, which we did.

When asked to explain his thought processes as to why the Company would not desire to proceed with the grievance matter in the face of charges against the Union, Edgar testified:

I didn't know what it would do, but I thought it was only proper that I disclose to him any possible ramification that could be created. Then, that decision would have been up to him.

Following his conversation with Edgar, Males contacted a representative of the Portland Subregional Office of the Board and informed her of the conversation which he had had with Edgar. The representative advised Males that he could withdraw the charges against the Union and informed him that he could file the charges at a later time. Pursuant to arrangements, Males met with the representative of the Regional Director and signed a withdrawal slip. When Males and Edgar again met prior to the 2 p.m. Joint Conference Board meeting, Males informed Edgar that he had withdrawn the charges. Males volunteered this information to Edgar. The Joint Conference Board meeting was held, and neither Edgar nor Hurst discussed with the company representatives the unfair labor practice charges which Males had filed the previous day.⁵

⁵ The testimony of Gary Males and Joseph Edgar, together with documentary evidence of record, establishes the foregoing. I have also considered the testimony of Howard Hurst in reaching the above findings. In many salient aspects, the testimony of Gary Males and Joseph Edgar is mutually corroborative with respect to the events which transpired on October 23. The testimony of Males is to the effect that when he met with Edgar and Hurst on the morning of October 23 Edgar stated, in so

The Joint Conference Board deadlocked on the issue of whether the discharge of Males was proper. In due course, the charge against American Steel, Inc., which Males had filed in Case 36-CA-3537 was dismissed, and the dismissal was sustained on appeal.

C. Conclusions

I find, in agreement with the General Counsel, that Joseph Edgar, Respondent's principal administrative officer, threatened to delay the processing of Males' grievance because Males had filed unfair labor practice charges against the Union with the Board pertaining to his September 11 termination. I conclude, therefore, that Respondent violated Section 8(b)(1)(A) of the Act. The rationale controlling this case was expressed by the Board in *Graphic Arts International Union 96 (B Williams Printing Company)*, 235 NLRB 1153 (1978), wherein the Board observed:

It is well established that a union may not resort to restraint and coercion in order to restrict the right of an employee-member to file charges with the Board, and that such conduct constitutes a violation of Section 8(b)(1)(A) of the Act. In determining whether conduct amounts to restraint or coercion in the exercise of an employee's Section 7 right to seek redress from the Board, the test is an objective, rather than a subjective, one and depends on whether, in the circumstances of a given case, the probable effect of the conduct is to restrain or coerce an employee in the exercise of his Section 7 rights. The Board has held that a threat to delay the processing of a grievance because of the grievant's filing an unfair labor practice charge constitutes an 8(b)(1)(A) violation.

In addition, it is well established that coercion may result from conduct indirect and disguised as well as from actions direct and explicit. E.g., *Motion Picture Studio Mechanics, Local 52, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO (Michael Levee Productions, Ltd.)*, 238 NLRB 19 (1978); *United Steel Workers of America, AFL-CIO-CLC, Local Union 5550 (Redfield Company, a Division of Outdoor Sports Industries)*, 223 NLRB 854 (1976).

Applying these principles to the facts of the case at bar, it is apparent that, in broaching the topic of the pending unfair labor practice charges in the context of the preparation meeting which preceded the scheduled

many words that Males would have to withdraw his charge against the Union before the Union would proceed to process the grievance before the Joint Conference Board. Moreover, Males testified that when he met again with Edgar on the afternoon of October 23 Edgar took the initiative to inquire whether he had accomplished the withdrawal. I have carefully evaluated the testimony of Edgar and conclude that he approached both facets of the withdrawal issue in the manner above found. Thus, I am convinced that Edgar approached the withdrawal issue in an indirect fashion and not frontally as Males testified. I have considered the testimony of Hurst with respect to this question but conclude that his zipper-type affirmation of the totality of Edgar's earlier testimony with respect to the conversations in question is of little value in assessing the credibility issue.

grievance meeting, Edgar created in the mind of Males a linkage and nexus between the charges Males had filed with the Board against the Union and unfettered consideration of his grievance by the Joint Conference Board. In the narrow context of this case, there existed, of course, no mutual exclusivity between open grievance channels and the right of Males to resort to Board processes for the purpose of challenging the legality of his termination, and no grounds of ethics, comity, or diplomacy between or among the parties to the grievance proceeding suggest themselves as an explanation for the compulsion Edgar purportedly held for informing the employer group of the pendency of the Board charges. The legal obligation to proceed to an evenhanded evaluation of the merits of the grievance pertained irrespective of the charges pending before the Board. Moreover, close analysis does not permit the interpretation that Edgar and Respondent would apply to Edgar's preconference remarks; namely, that Edgar was benignly apprising Males of the unpredictability of the employer group's reaction upon learning that charges had been filed with the Board pertaining to his discharge. Edgar conceded that, when he was speaking to Males, he did not know whether or not Males had filed charges against the Company, and Edgar's own testimony discloses a notable reticence on his part to advise, rather than admonish, Males concerning the pendency of the charges before the Board. Notably, Edgar's admonition was couched in negative terms projecting a spectre of employer recalcitrance. No assurance was proffered Males by Edgar that the Union would press the grievance irrespective of employer reaction. In a practical sense, Edgar's statement to Males on the occasion in question, although dissembling and disguised, contained no adjurative characteristic because, assessed objectively, it conveyed to Males the message that his resort to the processes of the Board through the filing of unfair labor practice charges against the Union stood as a material barrier to the dispassionate and timely processing of his grievance. That Males so interpreted Edgar's message is disclosed by the fact that he proceeded immediately to withdraw the charges pending against Respondent, while permitting the charges against the Company to stand. In my view, construing Edgar's statement in the light most favorable to Respondent, the effect of that statement was to restrain or coerce Males in the exercise of his rights under Section 7 of the Act to resort to the processes of the Board. I therefore conclude that Respondent violated Section 8(b)(1)(A) of the Act by virtue of Edgar's impermissible threat. See *Graphic Arts International Union 96B (Williams Printing)*, *supra*; *Local 138, International Union of Operating Engineers, AFL-CIO (Building Trades Employers Association of Long Island, Inc.)*, 148 NLRB 679 (1964); *Selwyn Shoe Manufacturing Corporation*, 172 NLRB 674, 682 (1968); cf. *Teamsters Local Union No. 279, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (S. F. Kennedy New Products, Inc.)*, 218 NLRB 1392 (1975). The decision of the Board in *Teamsters Local Union No. 279, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America (S. F. Kennedy New Products, Inc.)*, *supra*, is inapposite and dic-

tates no different conclusion. There the respondent union made no demand, direct or otherwise, upon the grievant-member that he withdraw charges which he had filed with the Board, and only a transitory impulse to hold the grievance in abeyance pending consultation was involved, an impulse from which the respondent union in the cited case quickly recanted. In the case at bar, Edgar abided the consequences of the incentive which he had himself supplied and to which Males involuntarily responded to the detriment of his Section 7 rights.

Contrary to Respondent, I find that a remedial order is appropriate and mandated herein. The Board has observed that "[n]o responsibility of a union to protect its members' interests, no duty of fair representation, no 'legitimate discretion' to process or not to process a grievance is justification to impede, deter, or interfere with an employee's right to come to this Board with an unfair labor practice charge." *Association of Packers & Drivers Union (Guy's Foods, Inc.)*, 188 NLRB 608 (1971). This declaration, together with the stress placed by the Supreme Court in *N.L.R.B. v. Industrial Union of Marine & Shipbuilding Workers of America, AFL-CIO, et al. [United States Lines Company]*, 391 U.S. 418 (1968), upon the right of employee-members of a union to be free from any coercive effort on the part of their bargaining representative to intrude upon their freedom to petition the Board for redress, renders inappropriate the appeal here lodged by Respondent, and invalidates the notion that Edgar was somehow free to threaten Males because of the asserted duplicity of his charges alleging a failure on the part of the Union to represent him in grievance handling or the timing of that charge in relation to the scheduled grievance meeting. See also *Freight Drivers and Helpers Local Union No. 557, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Liberty Transfer Company, Inc.)*, 218 NLRB 1117, 1120 (1975). Nor does the fact that the coercion or restraint herein evolved in a context free from other unfair labor practices at the hand of the Union with respect to Males defeat the necessity for a remedial order. See, e.g., *United Steelworkers of America, AFL-CIO-CLC, Local Union 5550 (Redfield Company, a Division of Outdoor Sports Industries)*, 223 NLRB at 856; *Association of Packers & Drivers Union (Guy's Foods, Inc.)*, 188 NLRB 608. See also *Coopers International Union of North America, AFL-CIO, and Local Union No. 42, etc. (Independent Stave Company, Inc.)*, 208 NLRB 175 (1974); cf. *Wichita Eagle & Beacon Publishing Co., Inc.*, 206 NLRB 55 (1973); *American Federation of Musicians, Local 76, AFL-CIO (Jimmy Wakely Show)*, 202 NLRB 620 (1973); *Local 100, Transport Workers Union of America, AFL-CIO (Liberty Coaches, Inc.)*, 202 NLRB 536, 539 (1977). That Edgar's threat had an efficacious effect upon Males is manifested by the fact that, following his conversation with Edgar, Males proceeded directly to withdraw the charges pending against the Union. Accordingly, the threat had an immediate and continuing effect upon the right of an employee to resort to the processes of the Board and to exercise his Section 7 rights. In my view, the conduct cannot be considered either innocuous or minimal in terms of cause and effect.

Upon the foregoing findings of fact, and upon the entire record in this proceeding, I make the following:

CONCLUSIONS OF LAW

1. American Steel, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. General Teamsters Local 162, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act
3. At all material times prior to September 11, 1979, Gary E. Males had been a member of Respondent and an employee employed in an appropriate collective-bargaining unit of the employees of American Steel, Inc., represented by Respondent.

4. By threatening not to proceed to a grievance hearing scheduled pursuant to a grievance initiated by Males under the collective-bargaining agreement because Males had filed unfair labor practice charges with the Board, Respondent restrained and coerced Males in the exercise of his rights under Section 7 of the Act in violation of Section 8(b)(1)(A).

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]